

## REMARKS

This Amendment is responsive to the Office Action dated December 28, 2005. Applicant has amended claims 19, 23, 24, 30-34, 37, 40, 41 and 43-45. Claims 1-59 are pending, with claims 1-18 and 46-59 being withdrawn due to a restriction requirement.

### **Claim Rejection Under 35 U.S.C. § 102**

In the Office Action, the Examiner rejected claims 19, 21, 24, 25, 28, 29, 32, 34, 35, 37, 39, 41, 42 and 45 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,836,993 to Cole (Cole). Applicant respectfully traverses the rejection to the extent the rejection may be considered applicable to the amended claims. Cole fails to disclose each and every feature of the claimed invention, as required by 35 U.S.C. § 102(b), and provides no teaching that would have suggested the desirability of modification to include such features.

For example, as amended, independent claims 19 and 37 require that a processor determine whether a patient is one of an anticipated patient and a non-anticipated patient, wherein the anticipated patient is an individual patient associated with a patient-specific, customized profile, and control delivery of therapy to the patient via an external defibrillator according to one of a general profile if the patient is the non-anticipated patient and the customized profile if the patient is the anticipated patient. Cole does not disclose the requirements of the independent claims.

In contrast to the requirements of the amended independent claims, Cole specifically describes potential patients for the electrotherapy device as follows:

“The second memory may also be used to operate the electrotherapy device in a custom operation mode that differs from an operation mode provided by the first memory. For example, a defibrillator operating with instructions encoded on a first memory to treat adult patients may be transformed into a pediatric defibrillator by attaching a second memory containing instructions used by the controller to treat small children.”<sup>1</sup>

In other words, Cole teaches treating two different classes of patients, pediatric and adult, with two different sets of instructions. Cole does not suggest controlling delivery of therapy to an individual anticipated patient according to an associated patient-specific, customized profile, and to other patients according to a general profile, as required by the amended independent claims.

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<sup>1</sup> Cole, Col. 5-6, ll. 66-6.

As another example, claims 21 and 39 require that the processor receives an indication from a patient identification device associated with the anticipated patient via an input circuit, and determines whether the patient is the anticipated patient based on the indication. Cole fails to teach the elements of claims 21 and 39. Contrary to the position stated in the Office Action, there is no patient identification device disclosed within the reference of Cole. The PC card described by Cole includes a memory, but there is no suggestion the PC card is a patient identification device that provides an indication of the anticipated patient to a processor.

Dependent claims 24-25, 28-29, 32, 34-35, 37, 39, 41-42 and 45 are allowable for at least the reasons discussed above with respect to independent claims 19 and 37. Applicant does not acquiesce to claims not specifically addressed by the Examiner and reserves the right to provide additional arguments to these claims.

Cole fails to disclose each and every limitation set forth in claims 19, 21, 24-25, 28-29, 32, 34-35, 37, 39, 41-42 and 45. For at least these reasons, the Examiner has failed to establish a *prima facie* case for anticipation of Applicant's claims 19, 21, 24-25, 28-29, 32, 34-35, 37, 39, 41-42 and 45 under 35 U.S.C. § 102(b). Withdrawal of this rejection is requested.

### **Claim Rejections Under 35 U.S.C. § 103**

In the Office Action, the Examiner rejected: claims 22, 26-27 and 36 under 35 U.S.C. § 103(a) as being unpatentable over Cole; claims 20 and 38 under 35 U.S.C. § 103(a) as being unpatentable over Cole in view of U.S. Patent Publication No. 2003/0195567 by Jayne et al. (Jayne); claim 36 under 35 U.S.C. § 103(a) as being unpatentable over Cole in view of U.S. Patent No. 6,141,584 to Rockwell et al. (Rockwell); and claims 23 and 40 under 35 U.S.C. § 103(a) as being unpatentable over Cole in view of U.S. Patent No. 5,285,781 to Brodard (Brodard).

Applicant respectfully traverses these rejections to the extent such rejections may be considered applicable to the claims as amended. The applied references fail to disclose or suggest the inventions defined by Applicant's claims, and provide no teaching that would have suggested the desirability of modification to arrive at the claimed invention.

As an initial matter, Applicant notes that Jayne, Rockwell and Brodard do not provide any teaching that would overcome the basic deficiencies of Cole with respect the requirements of the amended independent claims discussed above. Further, the applied references fail obviate the requirements of the dependent against which they are applied.

For example, with regard to claims 20 and 38, Applicant hereby informs the Examiner that the invention claimed in the present application and the subject matter of Jayne were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person. The recorded assignee of the Jayne application is Medtronic Physio-Control Corp. The present application was subject to assignment to Medtronic Physio-Control Corp. at the time of invention and is currently assigned to Medtronic Physio-Control Corp. The assignment of the present application was recorded on August 9, 2004. Because the present invention was subject to a common obligation of assignment at the time the invention was made, Jayne does not qualify as prior art against the claimed invention per the provisions of 35 U.S.C. § 103(c)(1).

As another example, claim 22 requires that the patient identification device comprises a radio-frequency identification (RFID) device. Cole fails to provide any suggestion of a patient identification device, as described above with respect to the deficiencies of Cole to claims 21 and 39. The PC card described by Cole includes a memory, but there is no suggestion the PC card is a patient identification device. Further, the Examiner states that the RFID device is “an arbitrary design consideration which fails to patentably distinguish over Cole.”<sup>2</sup> According to Cole, the PC card would fit into a “PC card slot.”<sup>3</sup> The PC card does not provide or suggest wireless radio-frequency communication, or the benefit therein. Therefore, there is no motivation to someone of ordinary skill in the art to modify the patient identification device to include a radio-frequency identification (RFID) device.

Claim 26 requires that the memory associated with the anticipated patient comprises a radio frequency identification (RFID) device that is interrogated by the external defibrillator. As mentioned above with respect to the deficiencies of Cole to claim 22, the PC card is not described or suggested to provide wireless radio-frequency communication or the advantage that

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<sup>2</sup> Office Action, Page 7.

<sup>3</sup> Cole, Col. 6, ll. 52-53.

it would provide. Therefore, there is no motivation to someone of ordinary skill in the art to modify the memory associated with the anticipated patient to include a radio-frequency identification (RFID) device.

For at least these reasons, the Examiner has failed to establish a *prima facie* case for non-patentability of Applicant's claims 20, 22, 23, 26-27, 36, 38 and 40 under 35 U.S.C. § 103(a). Withdrawal of this rejection is requested.

### **Allowable Subject Matter**

In the Office Action, the Examiner indicated that claims 30-31, 33 and 43-44 are objected to as including subject matter that would be allowable if rewritten in independent form.

Applicant appreciates this indication of allowability with respect to claims 30-31, 33 and 43-44.

### **CONCLUSION**

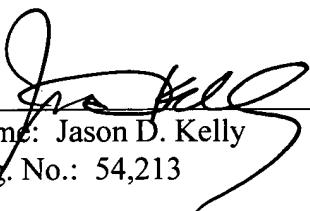
All claims in this application are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

Date:

6/28/06

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